

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: APPLE INC. DEVICE
PERFORMANCE LITIGATION

Case No. 18-md-02827-EJD

CASE MANAGEMENT ORDER NO. 4

On July 11, 2018, the parties to the above-entitled action appeared before Judge Edward J. Davila for a Case Management Conference. Based on a review of the action and the discussions held at the conference, the Court orders as follows:

1. Apple's motion to dismiss shall be limited to the six claims identified by Plaintiffs and the two threshold issues identified by Apple. See Dkt. No. 153 at 3, 6. This limitation is without prejudice to Apple's ability to challenge Plaintiffs' remaining claims.

2. Because Apple's motion to dismiss may definitively resolve issues about whether Plaintiffs can assert claims on behalf of non-U.S. residents and on behalf of consumers with iPad devices, the Court STAYS discovery as to those two issues. See In re Nexus 6P Prod. Liab. Litig., No. 17-cv-02185-BLF, 2017 WL 3581188, at *1 (N.D. Cal. Aug. 18, 2017).

3. The hearing date for Apple's motion to dismiss is continued to **September 28, 2018 at 10:00 a.m.** The parties shall submit proposed revised deadlines for Apple's motion to dismiss, Plaintiffs' opposition, and Apple's reply. The deadline for Apple's reply must be no later than September 14, 2018.

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4. Apple's motion to dismiss shall not exceed 35 pages. Plaintiffs' opposition shall not exceed 35 pages. Apple's reply shall not exceed 20 pages.

5. The Court will hold a further Case Management Conference on **August 23, 2018 at 1:30 p.m.** The parties shall file their joint case management statement by **August 16, 2018.**

6. The Court DENIES the pending motions for expedited relief pursuant to Federal Rule of Civil Procedure 23(d) in Gallman v. Apple, Inc., No. 17-cv-07285-EJD, ECF No. 31; Cunningham v. Apple, Inc., No. 18-cv-00338-EJD, ECF No. 24; and Block v. Apple Inc., No. 18-cv-00481-EJD, ECF No. 18. If the parties are unable to reach a resolution, Co-Lead Counsel represent that they "will re-file the motion in the MDL." Dkt. No. 153 at 7.

7. Per the parties' agreement, the Court DENIES Plaintiffs' Motion to Compel Apple's Compliance with Federal Rule of Civil Procedure 26(f), Dkt. No. 115, as moot.

8. The Court ORDERS the parties to meet and confer regarding Plaintiffs' Motion to Compel Expedited Production of Documents. Dkt. No. 116. The Court refers this matter to Magistrate Judge DeMarchi if the parties are unable to resolve the issue.

9. The Court ORDERS the parties to exchange initial disclosures under Federal Rule of Civil Procedure 26(a) on or before **September 5, 2018.**

10. Disputes regarding initial disclosures, the terms of a proposed protective order, and a protocol for electronically stored information are referred to Magistrate Judge DeMarchi unless and until a discovery special master is appointed.

11. In lieu of compliance with Civil Local Rule 16-8, the parties shall agree to the selection of a mediator or alternatively notify the Court that the parties elect not to retain a mediator no later than **August 16, 2018.**

12. The Court refers the three pending pro se actions—Mohammed v. Apple Inc., No. 18-cv-02438-EJD; Hogue v. Apple, Inc., No. 18-cv-00910-EJD; and Oliver v. Apple, Inc., No. 18-cv-03638-EJD—to the Federal Pro Bono Program. Contact and other information can be found at <https://www.cand.uscourts.gov/probono>.

13. Other than the service of any summons and/or complaint, the parties shall serve all papers in this litigation via email. The parties designate the following email recipients:


Interim Co-Lead Counsel: Joseph Cotchett (jcotchett@cpmlegal.com), Laurence King (lking@kaplanfox.com), Mark Molumphy (mmolumphy@cpmlegal.com), David Straite (dstraite@kaplanfox.com); Mario Choi (mchoi@kaplanfox.com); and Stephanie Biehl (sbiehl@cpmlegal.com).

Apple: Theodore J. Boutrous, Jr. (tboutrous@gibsondunn.com), Christopher Chorba (cchorba@gibsondunn.com), G. Charles Nierlich (gnierlich@gibsondunn.com), Timothy Loose (tloose@gibsondunn.com), Jillian London (jlondon@gibsondunn.com), Cynthia Chen McTernan (cmcternan@gibsondunn.com), and Kristina Eckert (keckert@gibsondunn.com).

Service on all of these recipients shall constitute effective service of all documents, except the parties may work out alternative arrangements for large files (in excess of 5MB).

IT IS SO ORDERED.

Dated: July 13, 2018


 EDWARD J. DAVILA
 United States District Judge